

## **RULE ADOPTION**

### **HEALTH AND SENIOR SERVICES**

#### **DIVISION OF SENIOR BENEFITS AND UTILIZATION MANAGEMENT**

#### **PROVISION OF PHARMACEUTICAL SERVICES UNDER THE PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED PROGRAM (PAAD)**

##### **Adopted New Rules: N.J.A.C. 8:83C**

Proposed: October 6, 2003 at 35 N.J.R. 4416(a).

Adopted: March 24, 2004 by Clifton R. Lacy, M.D., Commissioner, Department of Health and Senior Services.

Filed: March 26, 2004 as R.2004 d.163, without change.

Authority: N.J.S.A. 30:4D-20 et seq.

Effective Date: **April 19, 2004.**

Expiration Date: April 19, 2009.

N.J.A.C. 8:83C expired on February 10, 2004. In accordance with N.J.A.C. 1:30-6.4(g), the expired rules are adopted herein as new rules.

##### **Summary of Public Comments and Agency Responses:**

Comments were received from Cathy Polley, R.Ph., Vice President, State Government Affairs, National Association of Chain Drug Stores (NACDS), representing chain store pharmacy companies.

1. **COMMENT:** NACDS raises concerns relating to administrative burdens related to coordination of PAAD and Medicare benefits under the current rules. Currently, the Medicare program covers only a limited number of prescription drugs; however, NACDS states that "pharmacies are still required to coordinate benefits to determine patient cost sharing as well as some benefits." This is difficult for pharmacies at point of sale because "Medicare does not provide online information that would allow pharmacies to obtain up-to-date information in a real-time manner." NACDS feels that the PAAD program and the Department of Health and Senior Services should "assist pharmacies with coordination of benefits activities by providing information."

**RESPONSE:** The Department feels that the commenter has misperceived the current methodology for coordination of benefits. The current methodology is as follows: PAAD pays the pharmacy for the Medicare covered drug. PAAD then acts as an agent

for the pharmacy to coordinate benefits with Medicare. Medicare then pays the pharmacist directly. PAAD deducts the Medicare payment made from other balances due the pharmacist from PAAD.

2. **COMMENT:** NACDS' second comment raises the issue of the Federal Medicare Prescription Drug legislation that was recently signed into law. NACDS requests that the Department takes into consideration provisions of the legislation in the readoption of the rules concerning PAAD.

**RESPONSE:** Because this legislation does not become effective until 2006, it is premature to comment on what the coordination of benefits will entail with the Prescription Drug and Medicare Improvement Act of 2003.

### **Federal Standards Statement**

The PAAD program is completely State-funded. Therefore, there are no Federal standards governing eligibility or services, as these are established by State law and rule. However, there are Federal requirements to be followed in several other sections of the rules. In these cases, the Department imposes the same requirements as are imposed by the Federal government. Federal regulations at 42 C.F.R. 440.120 define what may be covered as prescribed drugs. See also 42 U.S.C. § 1396r-8(d). Rebate requirements are contained in 42 U.S.C. §§ 1396r-8(b) through (c) and (k). Federal restrictions regarding payment for less than effective drugs (known as DESI) are included in Section 1927(k) of the Act (42 U.S.C. § 1396r-(k)(2)(A) and 21 C.F.R. §310.6. Drug rebate requirements are at Section 1927(a) through (c) of the Act (42 U.S.C. § 1396r-8(a) through (c)).

Payment for drugs is subject to Federal upper payment limits (42 C.F.R. § 447.334) and Section 1927(e) and (k) of the Act (42 U.S.C. §§ 1396r-8(e) and 8(k), respectively).

The readopted rules are subject to, but do not exceed, requirements of 42 U.S.C. §§ 1396 et seq.

Since any Federal requirements applicable to the rules are met, but not exceeded, no Federal standards analysis is required.

**Full text** of the expired rules adopted as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 8:83C.